

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEVEN LEE THOMAS,

Petitioner,

Case No. 1:12-cv-815

v.

HON. ROBERT HOLMES BELL

JOHN PRELESNIK,

Respondent.

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ORDER

On July 25, 2016, Magistrate Judge Phillip J. Green issued a Report and Recommendation (“R&R”) recommending that Petitioner’s petition under 28 U.S.C. § 2254 be denied for lack of merit. (ECF No. 33.) On the same day, the Magistrate Judge issued an order denying Petitioner’s motions for leave to file amended petition and for stay and abeyance. (ECF No. 32.) This matter is before the Court on Petitioner’s Objections to the R&R and Petitioner’s “appeal of denial of motion to hold case in abeyance for return to state court.” (ECF No. 34.)

This Court is required to make a de novo review upon the record of those portions of the R&R to which specific objections have been made, and may accept, reject, or modify any or all of the magistrate judge’s findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see also Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995) (“[A] general objection to a magistrate’s report, which fails to specify the issues of contention, does not

satisfy the requirement that an objection be filed. The objections must be clear enough to enable the district court to discern those issues that are dispositive and contentious.”). Although the Magistrate Judge’s R&R is reviewed de novo, this Court must review the state court proceedings consistent with the standards set forth in 28 U.S.C. § 2254. Similarly, the Court is required to make a de novo determination when a magistrate judge’s ruling on a dispositive motion is challenged. *United States v. Curtis*, 237 F.3d 598, 603 (6th Cir. 2001).

Petitioner made three objections to the R&R. First, Petitioner objects to the Magistrate Judge’s determination that Petitioner had not demonstrated that the state court decision regarding Petitioner’s competency “was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States” or “was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d). Second, Petitioner objects to the Magistrate Judge’s determination that the state court’s finding that Petitioner’s guilty plea was knowing and voluntary passed review under deferential AEDPA standards. 28 U.S.C. § 2254(d). Third, Petitioner objects to the Magistrate Judge’s determination that Petitioner had not overcome the doubly deferential standard of review applicable to the state court decision rejecting his claims of ineffective assistance of counsel.

Although Petitioner disagrees with the Magistrate Judge’s conclusions regarding these issues, Petitioner has not demonstrated that the conclusions were erroneous. The R&R accurately recites the facts and correctly applies pertinent law. The Court agrees with and adopts the Magistrate Judge’s analysis and rulings on these issues.

With regard to the sections of the R&R not specifically objected to, the Court has

Petitioner also appeals the Magistrate Judge's order denying Petitioner's motions for leave to file amended petition and for stay and abeyance ("Order"). The Court sees no error in the Magistrate Judge's finding that amending the petition would be futile because the claim is barred by procedural default and the statute of limitations. There is no foundation for stay and abeyance to pursue a claim that is procedurally barred. The order accurately recites the facts and correctly applies pertinent law. The Court agrees with and adopts the Magistrate Judge's analysis and rulings on this issue. Accordingly,

IT IS HEREBY ORDERED that Petitioner's objections to the R&R (ECF No. 34) are **OVERRULED**.

IT IS FURTHER ORDERED that the R&R (ECF No. 33) is **APPROVED** and **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Petitioner's appeal of denial of motion to hold case in abeyance for return to state court (ECF No. 34) is **DENIED**.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c). Reasonable jurists would not disagree with the Court's conclusion that Petitioner's due process and ineffective assistance of counsel claims were meritless, and Petitioner's new claim of ineffective assistance of counsel was procedurally barred and untimely. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000).

A judgment will be entered that is consistent with this order.

Dated: September 12, 2016

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE